

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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| In re: |) | Chapter 11 |
| SEARS HOLDINGS CORPORATION, <i>et al.</i> , ¹ |) | Case No. 18-23538 (RDD) |
| Debtors. |) | (Jointly Administered) |

**MOTION OF CYRUS CAPITAL PARTNERS, L.P. FOR LEAVE TO FILE UNDER
SEAL (1) MEMORANDUM OF LAW IN SUPPORT OF CYRUS CAPITAL PARTNERS,
L.P. TO DETERMINE THE AMOUNT OF SECURED CLAIMS UNDER
SECTION 506(a) AND SECTION 507(b) ADMINISTRATIVE CLAIMS PURSUANT TO
BANKRUPTCY RULE 3012 AND IN OPPOSITION TO DEBTORS' REQUEST TO
SURCHARGE COLLATERAL PURSUANT TO SECTION 506(c) AND
(2) EXPERT REPORT OF MARTI P. MURRAY**

Cyrus Capital Partners, L.P. ("Cyrus"), in its capacity as creditor of Sears Holdings Corporation and certain of its affiliates (collectively, the "Debtors"), by and through its undersigned counsel, respectfully submits this motion (this "Motion") pursuant to the *Amended Stipulated Protective Order* entered on December 4, 2018 (ECF No. 1084) (the "Amended

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Stipulated Protective Order”), requiring the filing under seal of certain redacted portions of the (1) *Memorandum of Law in Support of Cyrus Capital Partners, L.P. to Determine the Amount of Secured Claims Under Section 506(a) and Section 507(b) Administrative Claims Pursuant to Bankruptcy Rule 3012 and in Opposition to Debtors’ Request to Surcharge Collateral Pursuant to Section 506(c)* (the “Brief”) and (2) *Expert Report of Marti P. Murray* (the “Expert Report”). Cyrus respectfully seeks entry of an order substantially in the format attached hereto as **Exhibit 1** (the “Proposed Order”). In further support of this Motion, Cyrus respectfully states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the Southern District of New York, dated December 1, 2016.

2. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 9018-1 and 9077-1(b) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Bankruptcy Rules”).

BACKGROUND

4. On October 15, 2018 (the “Petition Date”) and continuing thereafter, the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have been operating and managing their businesses as debtors-in-possession.

5. On May 26, 2019, the Debtors filed their *Motion to Estimate Certain 507(b) Claims for Reserve Purposes* (ECF No. 4034) (the “Motion to Estimate”). The Motion to Estimate followed several months of dispute between the Debtors and the Second Lien Holders (as defined

in the Motion to Estimate) as to the Debtors' ongoing use of cash collateral, and seeks entry of an order declaring that the Second Lien Holders are not entitled to any adequate protection recovery.

6. On June 2, 2019, the Debtors and the Second Lien Holders filed the *Stipulation and Order Concerning the Resolution of Certain Section 507(b) Claims* (ECF No. 4102) (the "507(b) Stipulation") agreeing to withdraw the Motion to Estimate and to resolve the 507(b) claim dispute pursuant to Bankruptcy Rule 3012.

7. Pursuant to the 507(b) Stipulation, the Second Lien Holders will be filing with the Court a common memorandum of law, and Cyrus will also submit the Brief and the Expert Report.

8. The Brief and the Expert Report reference materials that Debtors have designated as "Confidential" or "Highly Confidential." Cyrus is therefore complying with its obligations under the Amended Stipulated Protective Order to seek to file certain portions of each of the Brief and the Expert Report under seal. Cyrus will promptly confer with the Debtors to determine whether agreement can be reached on publicly filing the Brief and the Expert Report. Cyrus will also file redacted versions of the Brief and the Expert Report on the public docket as soon as reasonably practicable.

RELIEF REQUESTED

9. By this Motion, Cyrus seeks entry of the attached Proposed Order, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code and Rules 9018 and 9037 of the Bankruptcy Rules, granting permission to file the Brief and the Expert Report under seal with the Clerk of this Court in an envelope clearly indicating that the same has been filed under seal by Order of the United States Bankruptcy Court for the Southern District of New York and may not be unsealed until and unless permitted by further order of the Court.

BASIS FOR RELIEF

10. The Amended Stipulated Protective Order sets forth the procedures for designating discovery material as either Confidential or Highly Confidential and provides the terms for the limited use of such materials. Moreover, the Amended Stipulated Protective Order governs the use of Confidential and Highly Confidential materials in pleadings or other papers filed with the Court. Specifically, the Amended Stipulated Protective Order requires that all portions of pleadings, motions, or other papers filed with the Court that disclose Confidential or Highly Confidential materials be filed under seal. *See* Amended Stipulated Protective Order ¶ 13.

11. The Brief and the Expert Report rely upon, describe, and cite documents, testimony, and information that have been designated under the Amended Stipulated Protective Order as Confidential or Highly Confidential. Pursuant to the Amended Stipulated Protective Order, Cyrus is therefore required to file portions of the Brief and the Expert Report under seal.

12. In the interest of time and pursuant to its obligations under paragraph 13 of the Amended Stipulated Protective Order, counsel to Cyrus will work with counsel to the Debtors to determine whether they will remove their confidentiality designations and to determine what portions of the Brief and the Expert Report, if any, should be filed under seal. In the interim, unredacted versions of the Brief and the Expert Report will be provided to the Court, the Debtors, and the other Second Lien Holders.

13. The Debtors have consented to the filing of the Brief and the Expert Report under seal.

14. The Proposed Order that Cyrus submits is narrowly tailored to restrict access only to commercially sensitive and confidential information and the redactions proposed are limited to portions of the documents that include confidential and sensitive information.

15. Simultaneous to its discussions with the Debtors, Cyrus intends to file redacted versions of the Brief and the Expert Report on the public docket as soon as reasonably practicable.

NOTICE

16. Notice of this Motion will be provided in accordance with the procedures set forth in the *Amended Order Implementing Certain Notice and Case Management Procedures*, entered on November 1, 2018 (ECF No. 405). Cyrus respectfully submits that no further notice is required.

CONCLUSION

WHEREFORE, Cyrus respectfully requests that the Court authorize it to file the Brief and the Expert Report under seal and further relief deemed just, proper, and equitable.

Dated: June 18, 2019
New York, New York

MILBANK LLP

/s/ Thomas R. Kreller

Eric R. Reimer (admitted *pro hac vice*)
Thomas R. Kreller (admitted *pro hac vice*)
Robert J. Liubicic
2029 Century Park East, 33rd Floor
Los Angeles, CA 90067
Telephone: (424) 386-4000

Counsel to Cyrus Capital Partners, L.P.